



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** LESLYE CORSIGLIA  
RICHARD A. KEIT

**SUBJECT:** HUD COLLATERAL  
SUBSTITUTION

**DATE:** December 7, 2012

Approved

Date

12/7/12

**COUNCIL DISTRICT: 3**

## RECOMMENDATION

It is recommended that the City Council adopt a resolution authorizing the City Manager to execute and record a deed of trust and any other required documentation against the Convention Center South Hall site and the Fairmont Hotel Public Parking Garage as additional substitute security for a Section 108 loan in the amount of \$18,000,000, which funds were used to assist with the development of the Story and King Retail project.

## OUTCOME

Approval of the recommended action will allow the reconveyance of a Housing and Urban Development (HUD) Deed of Trust, which was recorded against the real property located at 193 East Santa Clara Street, San Jose as partial security for a HUD Section 108 loan, thereby allowing the Successor Agency the ability to sell the property.

## BACKGROUND

In 2002, the City Council and the Redevelopment Agency Board approved a Disposition and Development Agreement ("DDA") with BHV San Jose, LLC to redevelop the southeast and southwest corners of the Story and King Road intersection. To assist in developing this Project, the Redevelopment Agency of the City of San Jose ("Agency") obtained a HUD Section 108 loan in the amount of \$18,000,000, which was used to fund project costs, including land acquisition, demolition, hazardous materials removal and project construction. The City, as recipient of Community Development Block Grant (CDBG) funds from the federal government, was the applicant for the Section 108 funds and channeled the funds to the Agency. If the Agency is unable to repay the Section 108 loan, CDBG funds can be used to offset amounts owing. As security for the Section 108 loan, the Agency recorded Deeds of Trust against several Agency-owned properties, including the Arena Parking Lot 5A, the Jose Theater, and the 193 East Santa Clara site.

On January 13, 2011, the Agency solicited offers for the sale of several parcels of real property, including the real property located at 193 East Santa Clara Street ("Property"). On June 16, 2011, the Agency entered into a Purchase and Sale Agreement ("Purchase Agreement") with Brandenburg Properties, LLC and Green Valley Corporation (collectively, "Green Valley") for the sale of the Property. Prior to the close of escrow for the sale the Property to Green Valley and as a condition to closing, the Agency was required to reconvey the HUD Deed of Trust from the Property. The Agency contacted HUD and requested that HUD allow the Agency to reconvey the HUD Deed of Trust from the Property. As a condition to reconveyance of the HUD Deed of Trust from the Property, HUD required that the Agency provide additional collateral for the Section 108 loan. The Agency identified the Fairmont Hotel Parking Public Garage and the Convention Center South Hall site as additional collateral for the Section 108 loan.

On June 28, 2011, Governor Jerry Brown signed into law AB X1 26, as subsequently amended, which provided for the dissolution and winding down of redevelopment agencies throughout the State of California ("Dissolution Legislation"). On January 24, 2012, pursuant to the Dissolution Legislation, the City of San Jose elected to be the Successor Agency to the Redevelopment Agency of the City of San Jose ("Successor Agency") to administer the dissolution and winding down of the Agency.

On February 1, 2012, the Agency was dissolved by the Dissolution Legislation. Prior to June 28, 2011 (the effective date of the Dissolution Legislation), the Agency transferred various properties to the City and the San Jose Diridon Development Authority, including the Convention Center Expansion site and the Arena Parking Lot 5A. The Convention Center Expansion site was transferred to the City and the Arena Parking Lot 5A was transferred to the San Jose Diridon Development Authority. Both properties were transferred subject to a HUD Deed of Trust, which secured, in part, the Section 108 loan.

After the effective date of the Dissolution Legislation, the Purchase Agreement with Green Valley terminated. Green Valley had requested an extension of its due diligence period under the Purchase Agreement, but the Successor Agency did not have the authority to extend the contract under the Dissolution Legislation. Since the Property was an asset of the Successor Agency and would ultimately need to be sold under the Dissolution Legislation, Successor staff continued to work with HUD to reconvey the HUD Deed of Trust from the Property. In December, 2011, HUD approved the Fairmont Hotel Public Parking Garage and the Convention Center South Hall properties as substitute collateral.

On November 8, 2012, the Oversight Board approved the solicitation of offers to purchase four real property assets of the Successor Agency. These real property assets include the East Santa Clara Street Development Site (193 East Santa Clara Street), two Hoffman Via Monte parcels (5647 Gallup Drive and 1711 Mesa Drive), and the Central Place Parking Garage (88 East San Fernando Street). Successor Agency staff released the solicitation on November 12, 2012 and offers to purchase the various properties were received by the Successor Agency on December 3, 2012. At this time, Successor Agency staff are evaluating the offers received and will bring

forward to the Oversight Board on December 13, 2012, a recommendation with respect to the sale of these properties.

### **ANALYSIS**

If the Property is to be sold through the recent solicitation or is to be sold at some point in the future, the HUD Deed of Trust will need to be reconveyed so that the Property can be sold to a buyer free and clear of the HUD Deed of Trust. HUD has approved the reconveyance of the HUD Deed of Trust from the Property provided that additional collateral is provided to secure the HUD Section 108 loan. HUD has approved the Fairmont Hotel Public Parking Garage and the Convention Center South Hall properties as adequate substitute collateral. Staff therefore recommends that the Successor Agency Board authorize the City Manager to execute and record a Deed of Trust against the Fairmont Hotel Public Parking Garage and the Convention Center South Hall properties in order to allow the reconveyance of the HUD Deed of Trust from the Property.

Title to the Convention Center South Hall is currently in the City's name. Since the transfer from the Agency to the City occurred after January 1, 2011 and was not approved by the Oversight Board, the State Controller may order the property to be returned to the Successor Agency. However, if the City is ordered to return the Convention Center South Hall site to the Successor Agency, the City will reconvey the property subject to the HUD Deed of Trust. In addition, since the Convention Center South Hall site supports the San Jose Convention Center and is a governmental use property, if it is returned to the Successor Agency, both City and Successor Agency staff will recommend that the Oversight Board approve its transfer back to the City as a governmental use property as allowed under the Dissolution Legislation.

The outstanding balance of the HUD 108 loan is \$15,880,000. HUD requires that collateral be pledged in an amount equal to 1.25 times the loan balance, or in this case \$19,850,000. The chart below shows the current collateral pledged, and the changes proposed by this action. As shown in the chart, the City has sufficient collateral assigned to meet HUD's requirements.

<b>Property</b>	<b>Current Collateral Value</b>	<b>Proposed Collateral Value</b>
East Santa Clara/Symphony Site	\$12,280,000	\$0
HP Parking Lot	\$7,320,000	\$7,320,000
Jose Theater	\$3,140,000	\$3,140,000
Fairmont Garage	\$0	\$8,600,000
South Hall Site	\$0	\$3,140,000
<b>TOTALS</b>	<b>\$22,740,000</b>	<b>\$22,200,000</b>

It is important to note that the Convention Center South Hall site also provides \$13 million in collateral for another HUD 108 loan, so the total lien on that property after this action will be \$16,140,000. The property was appraised in July of 2011 for \$18,790,000, assuming highest and best use.

### **EVALUATION AND FOLLOW-UP**

No follow up is required.

### **PUBLIC OUTREACH/INTEREST**

The proposed action does not meet any of the criteria noted below for added outreach efforts. This staff report was posted on the Successor Agency's website and made available for public review in the public lobby area on the 14<sup>th</sup> floor of City Hall.

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach.

### **COORDINATION**

This matter has been coordinated with the City Managers Office, the Finance Department, the Housing Department, the City Attorney's Office and Successor Agency staff.

### **CEQA**

Not a project.

/s/  
Leslye Corsiglia,  
Housing Director

/s/  
Richard A. Keit,  
Managing Director  
Successor Agency

For more information, contact Leslye Corsiglia, Housing Director at 408-535-3851 or Richard Keit, Managing Director, Successor Agency, at 408-795-1849